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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,269	07/08/2001	Wolfgang Muller	R.32491	5937

7590 04/23/2003
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EXAMINER

DICKENS, CHARLENE

ART UNIT PAPER NUMBER

2855

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/308,269

Applicant(s)

MULLER ET AL.

Examiner

Ex. Dickens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 10-15, 17 & 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, 12, 17, & 20 of US Patent No. 6,422,070. Although the conflicting claims are not identical, they are not patentably distinct from each other because the recitations of an inclination angle enclosed by faces that approach each other in a direction of flow in the measuring conduit. US Patent 6,422,070 recites the measuring duct has a rectangular cross section and narrows in the axial direction (col. 6, lines 6-8), which is suggestive of an 8° inclination angle enclosed by the faces that approach each other in a direction of flow in the measuring conduit for the purpose of ensuring that a uniform parallel flow as undisturbed as possible prevails in the region of the measuring element (col. 3, lines 40-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an inclination angle enclosed by faces that approach each other in a direction of flow in the measuring conduit in US Patent 6,422,070 for the purpose of ensuring that a uniform parallel flow as undisturbed as possible prevails in the region of the measuring element.


Claim 16 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, 12, 17, & 20 of U.S. Patent No. 6,422,070 in view of US Patent 6,148,663. Claim differs with the recitation of an inclination angle, enclosed by an edge face, within a range of 30° to 60° within the measuring conduit. US Patent 6,148,663 discloses an inclination angle, enclosed by an edge face 45, within a range of 30° to 60° within the measuring conduit for the purpose of diverting the medium flowing from the outlet of the measurement conduit into the first section piece along the edge face into the second section piece (col. 4, lines 31-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an inclination angle enclosed by an edge face within the measuring conduit in the modified US Patent 6,422,070 for the purpose diverting the medium flowing from the outlet of the measurement conduit into the first section piece along the edge face into the second section piece.

Claim 19 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, 12, 17, & 20 of U.S. Patent No. 6,422,070 in view of Zurek et al. Claim differs from US Patent No. 6,422,070 with the recitation of a recess provided in a base. Zurek et al. discloses a recess 14 provided in a base for the purpose of reducing back airflow to the mass airflow sensor of an internal combustion engine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a recess provided in a base in modified US Patent No. 6,422,070 as taught by Zurek et al. for the purpose of reducing back air flow to the mass air flow sensor of an internal combustion engine.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ex. Dickens whose telephone number is 703-305-7047. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Leftkowitz can be reached on 703-305-4816. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3432 for regular communications and 703-305-3431 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

CD
Cd/dickens
April 20, 2003


EDWARD LEFKOWITZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800